

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

TOMSTEN, INC.  
dba ARCHIVER'S

Case No. 13-42153  
Chapter 11

Debtor.

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**NOTICE OF HEARING AND MOTION FOR  
APPROVAL OF REJECTION OF REAL PROPERTY LEASES**

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TO: The entities specified in Local Rule 9013-3

1. Tomsten, Inc. dba Archiver's ("Debtor"), through its undersigned attorneys, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at **10:30 a.m. on May 22, 2013**, before the Honorable Gregory F. Kishel, Courtroom 2A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this Motion must be filed and delivered not later than **May 17, 2013**, which is five (5) days before the time set for the hearing (including Saturdays, Sundays, and holidays). **Unless a response opposing the Motion is timely filed, the Court may grant the relief requested in the Motion without a hearing.**

4. This Court has jurisdiction over this Motion under 28 U.S.C. §§157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2). Venue of this proceeding and this Motion is properly in this district pursuant to 28 U.S.C. §§1408 and 1409.

5. This motion arises under 11 U.S.C. §365 and Bankruptcy Rule 6006. This motion is filed under Bankruptcy Rules 9013 and 9014 and Local Rule 9013. Debtor requests an order approving the rejection of unexpired real property leases.

6. A voluntary petition under Chapter 11 of the Bankruptcy Code was filed by Debtor on April 29, 2013 (the "Petition Date"). The Debtor is operating as a debtor-in-possession.

7. The Debtor is in the business of operating scrapbooking and memory craft stores in Minnesota and 17 other states, primarily located in shopping centers and malls. The Debtor operates 40 stores.

8. The past several years have seen a substantial change in this business and a corresponding decline in the Debtor's revenue. The Debtor is in the process of implementing new concepts at its stores which are designed to capitalize on the increasing demand for the effective management of digital memories including photos.

9. Part of the Debtor's reorganization strategy is the evaluation of the performance of its various locations. Prior to the Petition Date the Debtor vacated four stores located in Austin, Texas; Algonquin, Illinois; Fort Wayne, Indiana; and Memphis, Tennessee (the "Closed Stores"). Specifically, the stores and the associated leases (the "Leases") are:

- (a) 9600 S. IH-35, Service Rd. SB, Suite G-400, Austin, TX 78748;
- (b) 2212 S. Randall Road, Algonquin, IL 60102;
- (c) 4201 Coldwater Road, Suite C12, Ft. Wayne, IN 46805; and
- (d) 2269 No. Germantown Parkway, Suite 103, Memphis, TN 38016.

10. On the Petition Date the Debtor sent to the landlords of the Closed Stores a notice of the Debtor's rejection of the leases associated with those locations effective on the Petition Date. Copies of those letters are attached as **Exhibit A**.

11. Because the Leases require the payment of significant rent and other payments and the stores are vacant and no longer necessary or desirable to the Debtor's operations, Debtor seeks to reject the Leases, effective on the Petition Date.

12. Rejection of the Leases is in the best interest of the estate and its creditors because the stores do not generate any revenue, causes significant losses, and will continue to create losses for the Debtor and its estate. If rejection of the Leases is not approved the estate will be subject to significant administrative expense claims related to unutilized leased property.

13. If necessary, Debtor will call Jann Olsten, the Chief Executive Officer of Debtor, as a witness in connection with this motion.

**WHEREFORE,** Debtor respectfully requests that the Court approve rejection of the Lease effective April 29, 2013, and grant such further relief as the Court deems just.

Dated: May 2, 2013

RAVICH MEYER KIRKMAN  
McGRATH NAUMAN & TANSEY,  
A PROFESSIONAL ASSOCIATION

By /e/ Michael L. Meyer (72527)

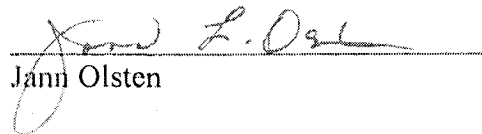
4545 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(612) 332-8511

ATTORNEYS FOR DEBTOR

**VERIFICATION**

I, Jann Olsten, Chief Executive Officer of the Debtor, declare under penalty of perjury that the facts set forth in the foregoing Notice of Hearing and Motion for Approval of the Rejection of Real Property Leases, are true and correct according to the best of my knowledge, information and belief.

Executed on: May 2, 2013

  
Jann Olsten

**RAVICHMEYER**

RAVICHMEYERKIRKMANMCGRATHNAUMAN&TANSEY

A PROFESSIONAL ASSOCIATION

**EXHIBIT A**

April 29, 2013

Inland Western Austin Southpark  
Meadows II Limited Partnership  
2901 Butterfield Road  
Oak Brook, IL 60523

Inland Southwest Management LLC  
5741 Legacy Drive, Suite 315  
Plano, TX 75024

Re: Tomsten, Inc. d/b/a Archiver's (the "Debtor")

Dear Sir or Madam:

On April 29, 2013 (the "Filing Date"), Tomsten, Inc. filed a petition in U.S. Bankruptcy Court, District of Minnesota, under chapter 11 of the Bankruptcy Code, Bky. Case No. 13-42153. We represent the Debtor in that case. Prior to the Filing Date, the Debtor vacated premises located at 9600 S. IH-35, Service Rd, SB, Suite G-400, Austin, TX 78748 which are leased from you under the terms of a lease dated May 4, 2012 (the "Lease").

Please take notice that the Lease is hereby rejected under 11 U.S.C. § 365(a). The Debtor will file a motion shortly seeking court approval of the rejection.

Please contact me with any questions.

Very truly yours,



MICHAEL L MEYER  
612.317.4745  
MLMEYER@RAVICHMEYER.COM

MLMljm

**RAVICHMEYER**

RAVICHMEYERKIRKMANMCGRATHNAUMAN&TANSEY

A PROFESSIONAL ASSOCIATION

April 29, 2013

Algonquin Commons, LLC  
c/o Jeffrey R. Anderson Real Estate, Inc.  
Rockwood Tower  
3805 Edwards Road, Suite 700  
Cincinnati, OH 45209

Dinsmore & Shohl, LLP  
Attn: Richard B. Tranter, Esq.  
Rockwood Tower  
3805 Edwards Road, Suite 700  
Cincinnati, OH 45209

Re: Tomsten, Inc. d/b/a Archiver's (the "Debtor")

Dear Sir or Madam:

On April 29, 2013 (the "Filing Date"), Tomsten, Inc. filed a petition in U.S. Bankruptcy Court, District of Minnesota, under chapter 11 of the Bankruptcy Code, Bky. Case No. 13-42153. We represent the Debtor in that case. Prior to the Filing Date, the Debtor vacated premises located at 2212 S. Randall Road, Algonquin, IL 60102 which are leased from you under the terms of a lease dated July 10, 2009 (the "Lease").

Please take notice that the Lease is hereby rejected under 11 U.S.C. § 365(a). The Debtor will file a motion shortly seeking court approval of the rejection.

Please contact me with any questions.

Very truly yours,



MICHAEL L MEYER  
612.317.4745  
MLMEYER@RAVICHMEYER.COM

MLMljm

**RAVICHMEYER**

RAVICHMEYERKIRKMANMCGRATHNAUMAN&TANSEY

A PROFESSIONAL ASSOCIATION

April 29, 2013

Glenbrook Square  
c/o GGP-Glenbrook LLC  
Attn: Law/Lease Administration Dept.  
110 North Wacker Drive  
Chicago, IL 60606

Re: Tomsten, Inc. d/b/a Archiver's (the "Debtor")

Dear Sir or Madam:

On April 29, 2013 (the "Filing Date"), Tomsten, Inc. filed a petition in U.S. Bankruptcy Court, District of Minnesota, under chapter 11 of the Bankruptcy Code, Bky. Case No. 13-42153. We represent the Debtor in that case. Prior to the Filing Date, the Debtor vacated premises located at 4201 Coldwater Road, Suite C12, Ft. Wayne, IN 46805 which are leased from you under the terms of a lease dated June 12, 2006 (the "Lease").

Please take notice that the Lease is hereby rejected under 11 U.S.C. § 365(a). The Debtor will file a motion shortly seeking court approval of the rejection.

Please contact me with any questions.

Very truly yours,



MICHAEL L MEYER  
612.317.4745  
MLMEYER@RAVICHMEYER.COM

MLMljm

**RAVICHMEYER**

RAVICHMEYERKIRKMANMCGRATHNAUMAN&TANSEY

A PROFESSIONAL ASSOCIATION

April 29, 2013

StoneCrest Services, Ltd.  
595 Round Rock West Drive, Suite 701  
Round Rock, TX 78681

Re: Tomsten, Inc. d/b/a Archiver's (the "Debtor")

Dear Sir or Madam:

On April 29, 2013 (the "Filing Date"), Tomsten, Inc. filed a petition in U.S. Bankruptcy Court, District of Minnesota, under chapter 11 of the Bankruptcy Code, Bky. Case No. 13-42153. We represent the Debtor in that case. Prior to the Filing Date, the Debtor vacated premises located at Countrywood Crossing, 2269 No. Germantown Parkway, Suite 103, Memphis, TN 38016 which are leased from you under the terms of a lease dated February 22, 2007 (the "Lease").

Please take notice that the Lease is hereby rejected under 11 U.S.C. § 365(a). The Debtor will file a motion shortly seeking court approval of the rejection.

Please contact me with any questions.

Very truly yours,



MICHAEL L. MEYER  
612.317.4745  
MLMEYER@RAVICHMEYER.COM

MLMljm



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**MEMORANDUM OF LAW**

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Debtor submits this Memorandum in support of its Motion for an Order Approving the Rejection of a Certain Real Property Lease ("Motion"). A hearing is scheduled on **May 22, 2013** to consider the Motion.

**FACTS**

The factual basis for this memorandum is set forth in the verified Motion and incorporated herein. Capitalized terms not defined herein have the definition set forth in the Motion.

**LEGAL ARGUMENT**

**The Proposed Rejection of Real Property Leases Is In The Best Interests Of Creditors And The Estate.**

11 U.S.C. §365(a) provides that:

[T]he trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the Debtor.

The Debtor has the right, subject to the Court's approval, to reject the real property leases and equipment leases referenced in the Motion. 11 U.S.C. §1107(a).

In order to obtain the Court's approval of assumption or rejection of a lease under 11 U.S.C. §365(a), the Debtor must establish that, in its best judgment, assumption or rejection is in the best interest of its creditors and the bankruptcy estate. *See In re Audra-John Corp.*, 140 B.R.

752, 755 (Bkrtcy.D.Minn. 1992); *N.L.R.B. v. Bildisco and Buildisco*, 465 U.S. 513, 520 (1984). Under this business judgment test, the movant must demonstrate that rejecting the contract will benefit the estate. The movant need not demonstrate that continued performance would result in an actual loss of value from the estate. *In re Audra-John Corp.*, 140 B.R. 752, 756 (Bkrtcy.D.Minn. 1992). “The test embodies considerable deference to the proponent of the rejection, so long as it can articulate sound business reasons for repudiating the contract.” *Id.*

Rejection of the Leases described in the Motion is in the best interest of creditors and the estate for the reasons set forth in the verified Motion. Based on those reasons and the foregoing law, the Debtor requests that the Court authorize rejection of the Leases as set forth in the Motion.

**WHEREFORE**, the Debtor respectfully requests that this Court approve rejection of the Leases as set forth in the Motion.

Dated: May 2, 2013

RAVICH MEYER KIRKMAN  
McGRATH NAUMAN & TANSEY,  
A PROFESSIONAL ASSOCIATION

By /e/ Michael L. Meyer (72527)

4545 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(612) 332-8511

ATTORNEYS FOR DEBTOR

**UNITED STATES BANKRUPTCY COURT  
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**UNSWORN CERTIFICATE OF SERVICE**

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I, Michael L. Meyer, declare under penalty of perjury that on May 2, 2013, copies of Debtor's:

1. Notice of Hearing and Motion for Approval of Rejection of Real Property Leases;
2. Memorandum of Law; and
3. Proposed Order Approving Rejection of Real Property Leases;

were served by sending to each party a copy thereof as noted on the attached Service List.

Dated: May 2, 2013

By: /e/ Michael L. Meyer (72527)

Ravich Meyer Kirkman McGrath  
Nauman & Tansey, P.A.  
4545 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(612) 332-8511

ATTORNEYS FOR DEBTOR

ELECTRONIC  
TOMSTEN INC DBA ARCHIVERS  
ATTN JANN OLSTEN  
6110 GOLDEN HILLS DRIVE  
GOLDEN VALLEY MN 55416

ELECTRONIC  
SARAH J WENCIL  
UNITED STATES TRUSTEE  
1015 US COURTHOUSE  
300 SOUTH FOURTH STREET  
MINNEAPOLIS MN 55415

MINN DEPT OF REVENUE  
COLLECTION ENFORCEMENT  
551 BANKRUPTCY / P O 64447  
ST PAUL MN 55164

INTERNAL REVENUE SERVICE  
ATTN SPECIAL PROCEDURES  
WELLS FARGO PL STOP 5700  
30 EAST SEVENTH  
ST PAUL MN 55101

IRS DISTRICT COUNSEL  
650 GALTIER PLAZA  
380 JACKSON STREET  
ST PAUL MN 55101

US ATTORNEY  
600 U S COURTHOUSE  
300 SOUTH FOURTH STREET  
MINNEAPOLIS MN 55415

ELECTRONIC  
EK SUCCESS LTD  
ATTN KATHLENE SIMS  
1125 WEST TAYLOR ROAD  
ROMEIOVILLE IL 60446

ELECTRONIC  
AMERICAN EXPRESS COMPANY  
ATTN PAUL LAUERMAN  
20022 NO 31<sup>ST</sup> AVE AZ-08-03-11  
PHOENIX AZ 85027

ELECTRONIC  
AMERICAN CRAFTS  
ATTN LEANDRA CALL  
476 NORTH 1500 WEST  
OREM UT 84057

ELECTRONIC  
GGP-GLENBROOK LLC  
GENERAL GROWTH MGMT OFFICE  
ATTN SARAH McCAIN  
4201 COLDWATER BLVD  
FORT WAYNE IN 46805

ELECTRONIC  
IN RETAIL FUND  
INLAND COMML PROPERTY MGMT  
ATTN JAMES PRATT  
P O BOX 9274  
OAK BROOK IL 60522

ELECTRONIC  
INLAND CONTINENTAL PROP MGMT  
ATTN DEBBIE SCHRAMM  
2901 BUTTERFIELD ROD BLDG 138  
OAK BROOK IL 60523

ELECTRONIC  
3L CORPORATION  
ATTN MICHELLE CANTU  
111 E MARQUARDT DRIVE  
WHEELING IL 60090

ELECTRONIC  
WE R MEMORY KEEPERS  
ATTN LAUREL MITCHELL  
631 NORTH 400 WEST  
SALT LAKE CITY UT 84116

ELECTRONIC  
MY MINDS EYE LLC  
ATTN JAZMIN TREASE  
260 NORTH 500 WEST  
BOUNTIFUL UT 84011

ELECTRONIC  
RPAI SOUTHWEST MGMT LLC  
ATTN DEAN DOMINGO  
2201 SPRING ROAD STE 200  
OAK BROOK IL 60523

ELECTRONIC  
GGP LIMITED PARTNERSHIP  
C/O DAVID L POLLACK  
BALLARD SPAHR LLP  
1735 MARKET STREET 51<sup>ST</sup> FL  
PHILADELPHIA PA 19103

ELECTRONIC  
SIMON PROPERTY GROUP INC  
C/O RONALD M TUCKER  
225 WEST WASHINGTON STREET  
INDIANAPOLIS IN 46204

ELECTRONIC  
DDR PRADO LLC / DDRA MAPLE GROVE  
CROSSING LLC / BRE DDR RIVERDALE  
VILLAGE OUTER RING LLC  
C/O ERIC C COTTON  
3300 ENTERPRISE PARKWAY  
P O BOX 228042  
BEACHWOOD OH 44122

ELECTRONIC  
NOVI TOWN CENTER INVESTORS LLC  
C/O DAVID L POLLACK  
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1735 MARKET STREET 51<sup>ST</sup> FL  
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ELECTRONIC  
BRIXMOR PROPERTY GROUP INC  
C/O DAVID L POLLACK  
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1735 MARKET STREET 51<sup>ST</sup> FL  
PHILADELPHIA PA 19103

**UNITED STATES BANKRUPTCY COURT  
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In re:

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Debtor.

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**ORDER APPROVING REJECTION OF REAL PROPERTY LEASES**

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This matter came before the undersigned on debtor's motion for an order approving the rejection of a certain real property lease ("Motion"). Appearances were as noted in the record. The court having heard the argument of counsel, reviewed the documents and pleadings on file with the court, and having determined that rejection of the lease as set forth in the Motion is in the best interest of the estate, it is

**ORDERED:**

1. Rejection of the Leases described in the Motion is approved effective April 29, 2013.

Dated:

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Gregory F. Kishel  
Chief United States Bankruptcy Judge